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VIA ELECTRONIC MAIL

September 2, 2020

The Honorable Janet D. Howell, Chair
Senate Finance and Appropriations Committee
P.O. Box 396
Richmond, VA 23218

Dear Chair Howell:

I write to you on behalf of the Virginia Association of Counties (VACo) to express our concerns and opposition to Senate Bill 5066 (Saslaw) and House Bill 5028 (Jones). The proposals would add COVID-19 to the list of presumptive illnesses eligible for compensation under workers' compensation for first responders and for first responders and school board employees respectively.

As indicated in our formal correspondence of August 18th, though the intent of this legislation may be well-meaning, we must share our concerns that an expansion of workers' compensation presumptions for COVID-19 in addition to other recent changes in the benefits program could result in substantial fiscal impacts to state and local governments at a time in which we are struggling to provide essential and expanded services in the midst of declining revenues and increased constituent needs. According to actuarial analysis from VACORP, this includes a \$20-\$25 million fiscal impact for expanding presumptions for first responders as would be required by enactment of SB 5066 and an additional \$60-\$70 million fiscal impact for expanding presumptions to school board employees as would be required by HB 5028.

Furthermore, creating a presumptive workers' compensation standard for a community-spread disease introduces a level of liability unprecedented for the infectious disease presumption section of the Virginia Workers' Compensation Act. Whereas existing presumptive infectious diseases such as hepatitis or HIV are linked to a documented exposure to blood or bodily fluids, documenting exposure to COVID-19 poses its own challenges. Generally, workers' compensation does not cover community-spread illnesses like a cold or the flu because they usually cannot be directly tied to the workplace. Though COVID-19 can impact the health of individuals more drastically than either of these illnesses, the same principle applies. It is difficult to determine exactly when and where an individual may have contracted COVID-19, and whether that was in the course of normal employment or through individual actions of the employee outside of the workplace and the control of the employer.

The recent implementation and enforcement of the Virginia Department of Labor and Industry 16VAC25-220, Emergency Temporary Standard requires employers to control, prevent, and mitigate the spread of COVID-19. County governments are committed to

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providing as safe a workspace as is possible and in compliance with the prescriptions of the emergency standards. Even if in full compliance with the emergency standards, if an eligible employee as proposed by the legislation were to contract COVID-19 outside of the workplace, the legislation would require a burden of proof on the employer to refute which would be difficult to overcome.

Local governments and risk insurance providers have not budgeted for an expansion of liability to cover additional presumptions related to COVID-19. We do not yet know if the number of infections will increase again or when a vaccine for the virus will become widely available. Furthermore, the potentially unknown latent effects of COVID-19, may include lifetime side effects that would need to be treated under a lifetime workers' compensation medical award. All of these unknowns create additional liabilities with significant fiscal impact to local governments.

For these reasons, we reiterate that passage of any legislation that expands presumptions to include COVID-19 be done only if in concert with additional state funding assistance to local governments to offset additional costs through risk insurance. Without this support, we must continue to oppose this legislation and respectfully urge the Committee to vote accordingly.

Respectfully,

A handwritten signature in black ink, appearing to read "Dean A. Lynch".

Dean A. Lynch, CAE
Executive Director
Virginia Association of Counties

cc: Members, Senate Finance and Appropriations Committee
Members, VACo Board of Directors